

R. C. Plastics, Inc. and Local 164, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner.
Case 7-RC-15747

April 28, 1981

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board has considered determinative challenges to ballots cast in an election held March 7, 1980,¹ and the Hearing Officer's report recommending disposition of same.² The Board has reviewed the record in light of the exceptions and brief and hereby adopts the Hearing Officer's findings and recommendations, as modified herein.

The Hearing Officer found that Foremen Doug Bradshaw, Kevin Ladd, and Robert Dobbelaere were supervisors under Section 2(11) of the Act because they had authority, *inter alia*, to discipline employees and to responsibly direct their work. He also found that Foreman Bradshaw had principal responsibility for the decision to discharge three employees—Marian Webb, Dan Wollams, and Linda Wollams. We find merit in the Employer's exceptions to the Hearing Officer's conclusions concerning these discharges and the part Bradshaw played in them. However, we affirm the Hearing Officer's conclusion that Bradshaw, Ladd, and Dobbelaere are statutory supervisors because we find that the record clearly establishes that they responsibly direct the work of employees.

The Employer produces custom injection plastic molding for various industries, at a facility located in Hillsdale, Michigan. It operates on three round-the-clock shifts with a total work force of approximately 20 individuals. With the exception of Bradshaw, Ladd, Dobbelaere, and several individuals classified as material handlers, the work force is composed almost entirely of women. Co-owner Lewis Cox exercises overall authority over the Employer's operations in his capacity as plant manager.³ Together with Production Manager Jim Reed, Cox also establishes production specifications for individual jobs. Dobbelaere oversees the first shift, Ladd the second shift, and Bradshaw the

third shift.⁴ In addition, each foreman is responsible for changing molds on machines, for insuring the machines' proper operation, and for solving production problems within his competence, including making certain repairs.⁵ Management meetings are held during the first shift at which discipline, employee work, and long- and short-term production requirements and problems are discussed. The foremen participate in these meetings and contribute comments and suggestions which are sometimes followed.⁶ Cox and Reed are also generally available for consultations with foremen on production problems or employees' performance whenever the need arises. Both are present during the first shift and the first 2 to 3 hours of the second, and one or the other can always be reached by phone at other times. The frequency of such telephone contact appears to vary with the nature of the production problems encountered during a shift.⁷ Discussion of discipline or general performance problems appears almost always to be postponed until the next day.

Dobbelaere described the responsibilities of the foremen in directing work as "keeping employees busy and getting the work done." The record shows that the foremen make all work assignments and oversee the quality of production.⁸ To assist the foremen in achieving the desired quality and level of production, Cox provides them with a list of production priorities and specifications. This list is utilized by each foreman in conjunction with production reports compiled by employees of the previous shifts and serves as a guide for allocating available production resources rather than as explicit directions for meeting contingencies. Once jobs are set up on different machines in accordance with the production specifications provided them, the foremen seek to meet production requirements primarily by minimizing loss of production time due to disciplinary or conduct problems, by keeping machines in operating order, and by coordinat-

⁴ The three shifts run from 7 a.m. to 3 p.m., 3 to 11 p.m., and 11 p.m. to 7 a.m.

⁵ Testimony indicates that the three possess significant technical skills and understanding of the Employer's production process.

Although the parties stipulated that the responsibilities and authority of the three foremen are the same, work on the first shift differs slightly from that on the second and third. Because both Cox and Reed are present during the first shift, the Employer sets up most jobs and attempts to solve basic production problems during that time. Dobbelaere therefore spends more time performing setup work, including changing molds, than either Ladd or Bradshaw. From the record it appears that Dobbelaere may spend as much as 6 or more hours a day performing physical work, while Ladd and Bradshaw spend considerably less time on such work.

⁶ All three foremen are salaried, and Ladd and Bradshaw apparently attend these meetings on their own time.

⁷ Third Shift Foreman Bradshaw's testimony indicates that he contacts Cox or Reed to discuss production problems only 1 to 2 nights a week.

⁸ Thus, foremen routinely tell employees to redo inadequate work and monitor employees' performance.

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was: 15 for, and 4 against, the Petitioner; there were 11 challenged ballots, a sufficient number to affect the results.

² The Hearing Officer recommended overruling the challenges to eight ballots but sustaining the challenges to three others. This recommendation would result in Petitioner's certification. The Employer has excepted to the Hearing Officer's recommended sustaining of the three challenged ballots. In the absence of exceptions we adopt, *pro forma*, the recommended overruling of the challenges to the other eight ballots.

³ Co-owner Dan Laggis has primary responsibility for sales and has little to do with production matters.

ing work and meal breaks to minimize loss of production time. When machines become inoperative, maintaining production involves deciding whether to assign the operator of a machine to another machine or to other tasks, or whether to suggest to Cox that the operator or another employee with less seniority be sent home without pay. These decisions entail judgments estimating how long a machine will be inoperative, determining whether there is productive work an employee can be assigned to do to avoid sending her home, and deciding which machines employees could best be assigned to operate. Although normally employees are moved from machine to machine in a fixed order of rotation in order to avoid fatigue, changes in assignments which are made to increase production or compensate for lost production due to machine breakdowns are based on the foremen's judgment of the employee's ability to perform a particular job. The Employer does not have a system for merit raises for production workers based on work evaluations. However, the foremen routinely evaluate and discuss employees' work with Cox as part of their responsibility to maintain acceptable production levels. They also monitor the work of newly hired employees and report to Cox to assist him in determining whether to continue their employment.

Testimony by employees indicates that they view the foremen as their supervisors and generally obey their orders to perform specific tasks. They look to the foremen for direction and assignment of tasks, and permission to take time off or use an office telephone. They regularly bring work-related problems to their attention. Employees also testified that work orders are often accompanied by threats which they believe can result in loss of their jobs if tasks are not performed. For example, on one occasion, three boxes of excess scrap were run because Foreman Dobbelaere was unavailable to fix a malfunctioning machine. When employee Gayle Johnston refused Dobbelaere's orders to sort the scrap because she was behind on her work, Dobbelaere told her, "I'm not here to work. I'm here to see that you work. You either sort the scrap or there's the door." Johnston sorted the scrap. Similarly, Oretha Johnson testified that one evening employees were doing very fast work that involved packing and stacking boxes. Bradshaw ordered them to make their own boxes as well, because the utility person was unavailable to do that work. When Johnson protested that was too much work, Bradshaw said, "You will do as I say, or else there is the door." Both Dobbelaere and Bradshaw admitted using such threats to induce employees to work. The record indicates that, when employees

question the foremen's authority over their general conduct, the foremen may, if verbal exhortations fail, reassert their authority by taking the problem to Cox should they decide that the conduct in question will probably recur and that it has a significant effect on production.

Although Cox denied that the foremen have significant disciplinary authority, he conceded that he holds the foremen out to employees as "figure heads" to facilitate operations. The record indicates, however, that the foremen exercise substantial actual authority as a result of their status as "figure heads." Thus, Cox admitted knowing of the use of threats of job loss to induce employees to work and that he has not taken steps to clarify to employees what he asserts to be the limited extent of the foremen's authority to discipline them. Although Cox has allowed an employee who left work rather than perform a task directed by a foreman to return to work the next day, the employee apparently forfeited her pay for the hours she missed and there is no evidence the foreman was disciplined or rebuked for inducing her to leave work. Similarly, Cox encourages the foremen to negotiate complaints and problems of employees and to settle them without recourse to formal discipline or higher management. Although employees can and do appeal determinations by foremen, there are no formal procedures for doing so and such appeals appear to depend solely on the assertiveness of the individual employee involved.⁹ As stated, employees generally believe their jobs are in jeopardy if they do not obey work orders by foremen. The extent to which Cox's approval of foremen's actions has reinforced employees' belief in the foremen's disciplinary authority has resulted in the foremen's actual ability to affect employees' compensation and working conditions.¹⁰ The influence of the foremen is heightened by the fact that they have clear discretion to decide which disciplinary problems so interfere with production to warrant being brought to Cox's attention.¹¹ When

⁹ Thus, Cox testified that foremen are responsible for catching obvious discrepancies in employee timesheets. He also testified that employees would complain to him if foremen affected their pay adversely by changing a timesheet over their objection. However, although employees testified foremen have on occasion told them to correct their sheets, no employee has ever complained about this to Cox.

¹⁰ In addition to loss of pay which may be suffered if an employee is induced to leave work, foremen can affect compensation of employees by correcting hours reported on timesheets on which pay is based. Temporary and permanent reassignments to certain jobs have also resulted in differences in pay.

¹¹ Cox testified that he thought the foremen have authority to "point out to [employees] that they were not doing proper work, that they were not complying with requests or requirements of the job, and to indicate to them that disciplinary action would be taken [if they failed to meet certain requirements]." The fact that the Employer appears to have few rules or guidelines concerning employee conduct or performance adds to

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foremen do tell Cox about a problem with an employee, they provide him with information about the employee's conduct and performance, and on occasion recommend that action be taken and what that action should be. Cox testified that foremen had on a number of occasions told him of employees they felt disrupted the work on a shift, or who were unable to produce adequate numbers of parts, and the foremen had, in effect, recommended that such employees be fired. Although Cox testified that the foremen never actually fired an employee without his knowledge, he stated that he listened to the foremen on these occasions and considered the problems brought to his attention. Foremen have been specifically authorized to investigate suspected employee misconduct, inform employees of discharges, give oral reprimands, and announce broad Employer policies. Similarly, while the record indicates that the actual authority of the foremen independently to grant time off to employees is limited to requests for less than 8 hours, employees are not told that any of their requests are transmitted to Cox, and employees testified that they believe that all such requests were granted or denied by the foremen.¹²

On the basis of the foregoing and the record as a whole, we find that the foremen have authority to and in fact use independent judgment to responsibly direct the work of the employees in the interest of the Employer. The record clearly shows that a primary responsibility of the foremen is to maximize production work, and that considerations concerning the level of production guide foremen's nonroutine directions to employees. In fulfilling their responsibilities, the foremen use independent judgment to evaluate the work capability of employees, direct their work, and allocate production resources in accordance with information provided by the shift reports and lists of priorities furnished them by Cox, and decide when employees' conduct interferes with production. The authority which they wield over employees by virtue of their designated positions in the Employer's supervisory hierarchy is consciously and effectively used by them

the scope of the foremen's discretion in reporting problems with employee conduct. Cox also testified that the foremen themselves "feel that they have the authority for disciplinary action beyond grabbing a broom or taking a break . . . in case of work interruption of some kind."

¹² Although the foremen testified that they must grant all routine requests for time off and refer all other requests to Cox, they appear to exercise some discretion in refusing such requests. Thus, Ladd admitted that he had denied an employee's request to leave work early. Some employees testified that they were frequently "hassled" by Dobbelaere before he granted their requests. Furthermore, the Employer has no written policy or procedure for granting time off.

to facilitate their direction of production. Foremen participate actively in management meetings at which production problems and techniques are discussed. Our conclusions are reinforced by the fact that the Employer's evaluation of the foremen is based primarily not on their own production work but on production levels on their shifts. Thus, in addition to being paid individually negotiated salaries ranging from \$10,000 to \$15,000, the foremen are also paid a yearly bonus based partly on the profitability of the Employer's operations. These bonuses range from \$2,000 to \$5,000 and, when combined with their base salaries, result in incomes three times that of any production worker.¹³ Cox testified that the purpose of this bonus is to encourage the foremen to promote productivity, and admitted that one purpose of the shift reports utilized by the foremen is to facilitate competition between the shifts. The record amply demonstrates the foremen's resultant identification with management.

Based on the above, we find that Robert Dobbelaere, Kevin Ladd, and Doug Bradshaw are supervisors within the meaning of the Act and we sustain the challenges to their ballots. As the remaining challenges to ballots are not determinative of the results of the election, we shall certify Petitioner.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Local 164, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and that, pursuant to Section 9(a) of the Act, the foregoing labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

All full-time and regular part-time production and maintenance employees including warehouse employees, and truck drivers employed by the Employer at its facility located at 410 Hillsdale Street, Hillsdale, Michigan; but excluding office clerical employees; guards and supervisors as defined in the Act.

¹³ In addition to substantially higher pay, foremen receive 2 to 4 weeks of paid vacation each year, as well as health insurance benefits. Employees receive no vacation, and can have health insurance payments deducted, but not paid, by the Employer.